

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MARIO BATTON,

Plaintiff,

v.

A. ZARATE, et al.,

Defendants.

Case No. 1:21-cv-00571-JLT (PC)

**ORDER DENYING PLAINTIFF'S THIRD
REQUEST FOR APPOINTMENT OF
COUNSEL**

(Doc. 17)

Plaintiff has filed a third request for appointment of counsel. (Doc. 17.) Plaintiff argues that he has a Test of Adult Basic Education ('TABE') reading score of 2.1, in addition to mental and physical disabilities. In support of the motion, Plaintiff submits mental health care records.

As previously discussed, Plaintiff does not have a constitutional right to appointed counsel in this action, *Rand v. Rowland*, 113 F.3d 1520, 1525 (9th Cir. 1997), and the Court cannot require an attorney to represent Plaintiff pursuant to 28 U.S.C. § 1915(e)(1). *Mallard v. U.S. Dist. Ct. for the S. Dist. of Iowa*, 490 U.S. 296, 298 (1989). The Court may request the voluntary assistance of counsel under section 1915(e)(1). *Rand*, 113 F.3d at 1525. However, without a reasonable method of securing and compensating counsel, the Court will seek volunteer counsel only in the most serious and exceptional cases. In determining whether exceptional circumstances exist, the district court must evaluate both the likelihood of success of the merits and the ability of

1 the plaintiff to articulate his claims *pro se* due the complexity of the legal issues involved. *Rand*,
2 113 F.3d at 1525.

3 Though the records demonstrate that Plaintiff suffers from multiple physical and mental
4 conditions, they do not indicate circumstances that warrant appointment of counsel. Even
5 assuming that Plaintiff is not well-versed in the law and that he has made serious allegations,
6 which, if proved, would entitle him to relief, his case is not exceptional. This Court is faced with
7 similar cases almost daily. At this early stage in the proceedings, the Court cannot determine that
8 Plaintiff is likely to succeed on the merits. Moreover, based on a review of the record, the Court
9 finds that Plaintiff can articulate his claims adequately. *Id.* For the foregoing reasons, the Court
10 **DENIES WITHOUT PREJUDICE** Plaintiff's third motion for the appointment of counsel.

11 (Doc. 17.)

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13 IT IS SO ORDERED.

14 Dated: November 15, 2021

15 /s/ Jennifer L. Thurston
16 CHIEF UNITED STATES MAGISTRATE JUDGE
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